

# ***DISCLOSURE***

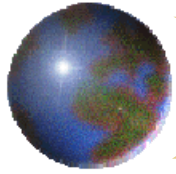
## *The Underwriter's Perspective*



**Don Backstrom**

Managing Director & Principal

Backstrom McCarley Berry & Co., LLC

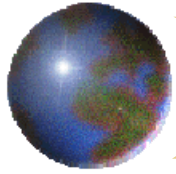


## DISCLOSURE: The Underwriter's Perspective



# *Federal Securities Law*

- The Federal Government regulates disclosure in connection with the issuance of most securities.
- Federal securities law focuses on the fact that the Issuer has more information about the source of repayment than the Investors and there may be incentives not to disclose if doing so would preclude issuance or adversely affect pricing.
- Federal laws are designed to provide disincentives to bad acts and guidelines to those wishing to act properly.

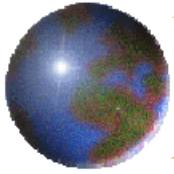


## DISCLOSURE: The Underwriter's Perspective



# *The 1933 Act & The Exchange Act*

- Primary Federal securities laws:
  - The Securities Act of 1933 (the "1933 Act")
  - The Securities Exchange Act of 1934 (the "Exchange Act")
- Basic objectives of the 1933 Act and the Exchange Act:
  - Require disclosure of material information about securities to allow investors to make informed decisions
  - Prohibit misrepresentation or other fraudulent conduct in connection with the purchase and sale of securities

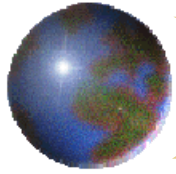


## DISCLOSURE: The Underwriter's Perspective



### *Issuer's Obligations & Rule 15c2-12*

- The Issuer is **primarily liable** for any material misstatements or omissions regarding the documents used to offer and sell their securities
- Consequently, every Issuer must make every effort to ensure that offering documents are accurate and complete

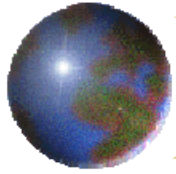


## DISCLOSURE: The Underwriter's Perspective



### *Issuer's Obligations & Rule 15c2-12*

- In connection with the Orange County bankruptcy investigations, the SEC reiterated that:
  - Issuers “**bear the most significant responsibility to ensure**” disclosure is adequate.
  - “A public official may not authorize disclosure that the official knows to be false.”
  - “Nor may a public official authorize disclosure while recklessly disregarding facts that indicate that there is a risk that the disclose maybe misleading.”

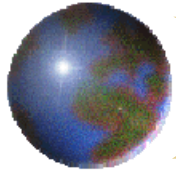


## DISCLOSURE: The Underwriter's Perspective



# *Issuer's Obligations & Rule 15c2-12*

- The SEC has stated:
  - "Because they are ultimately responsible for the content of their disclosure, Issuers should insist that any professional retained to assist in the preparation of their disclosure documents have a professional understanding of the disclosure requirements under the Federal Securities Law."

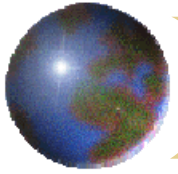


## DISCLOSURE: The Underwriter's Perspective



### *Underwriter's Obligations & Rule 15c2-12*

- Underwriters of Municipal Securities are subject to the anti-fraud provisions of the securities laws.
- Underwriters must conduct an independent investigation of the Issuers affairs.
- Underwriters will generally require the delivery of certifications and opinions as to the completeness and accuracy of the Issuer's offering material.



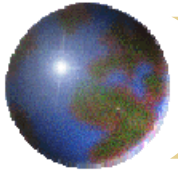
## DISCLOSURE: The Underwriter's Perspective



### *Underwriter's Obligations & Rule 15c2-12*

- Rule 15c2-12 places specific burdens upon the Underwriter of Municipal Securities:
  - Requires, prior to any bid, purchase, offer or sale, the Underwriter to obtain and review an official statement which the Issuer “deems final as of its date”
  - Requires the receipt of a sufficient number of copies of OS's within seven business days after the bonds are sold.
  - Requires the Underwriter to obtain a commitment from the Issuer to provide continuing disclosure during the entire life of the issue and a commitment to disclose certain material events whenever they occur.



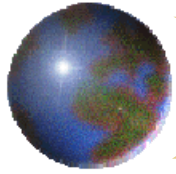


## DISCLOSURE: The Underwriter's Perspective



### *Underwriter's Obligations & Rule 15c2-12*

- Rule 15c2-12 requires the Underwriter to “reasonably determine” that the Issuer has undertaken in a written agreement for the benefit of the Bondholders to provide four categories of information:
  - Certain “annual financial information” of the type presented in the official statement
  - Audited financial statement, when and if available
  - Notice of the occurrence of any of 11 events, if material, in a timely manner
  - Notice of any failure to file the required annual financial information.

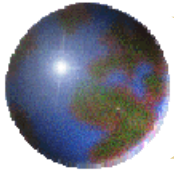


## DISCLOSURE: The Underwriter's Perspective



### *Underwriter's Obligations & Rule 15c2-12*

- The Disclosure Agreement: Material Events
  1. Principal and interest payment delinquencies
  2. Non-payment related defaults
  3. Unscheduled draws on debt service reserves reflecting financial difficulties
  4. Unscheduled draws on credit enhancements reflecting financial difficulties.
  5. Substitution of credit or liquidity provider, or their failure to perform
  6. Adverse tax opinion or events affecting the tax-exempt status of the security



## DISCLOSURE: The Underwriter's Perspective



### *Underwriter's Obligations & Rule 15c2-12*

7. Modifications to rights of security holders
  8. Optional or unscheduled bond calls
  9. Defeasances
  10. Release, substitution, or sale of property securing repayment of the securities
  11. Rating change
- Non compliance with any of the Material Events must be reported and disclosed in future official statements for five years.